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220 CMR 13.00: CONSUMER PROTECTION FROM THE UNAUTHORIZED CHANGING OF LOCAL OR LONG DISTANCE TELEPHONE SERVICE PROVIDERS

Section

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13.01: Purpose and Scope

(1) Purpose. The purpose of 220 CMR 13.00 is to establish rules and regulations implementing the Massachusetts "anti-slamming" statute; specifically, 220 CMR 13.00 govern the conduct of third party verification ("TPV"), informal dispute resolution procedures for customer complaints, and the establishment of a record of complaints.

(2) Scope. 220 CMR 13.00 shall apply to all telephone interexchange carriers ("IXC") and local exchange carriers ("LEC"), and their agents doing business in Massachusetts or, where applicable, to companies that provide TPV services.

13.02: Definitions

For purposes of 220 CMR 13.00, the terms set forth below shall be defined as follows:

Agent means a person authorized by another (principal) to act for or in place of the principal.

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Customer means a person or business who resides in Massachusetts and subscribes to local or long distance telecommunications services.

Department means the Department of Telecommunications and Energy.

Interexchange Carrier or IXC means any telecommunications common carrier engaged in the provision of long distance telephone service.

Letter of Agency or LOA means a document meeting the form and content requirements of M.G.L. c. 93, § 109 and 47 CFR 64.1160, signed by a customer to indicate that the customer has authorized a change of his or her IXC or LEC.

Local Exchange Carrier or LEC means a telecommunications common carrier registered with the Department to provide local exchange telecommunications service, not including persons engaged in the provision of commercial mobile service under section 332(e) of the Federal Communications Act of 1934, except to the extent that the Department determines such service should be included in the definition of such term.

Slamming means any unauthorized change to a customer's primary IXC or LEC.

Telecommunications Common Carrier means any entity registered with the Department to provide telecommunications services.

Third Party Verification or TPV means a customer's oral authorization to change an IXC or LEC that meets the requirements set forth in M.G.L. c. 93, § 109(c), recorded by an entity registered with the Department operating in a location physically separate from an IXC, LEC, or telemarketing representative.

13.03: Requirements for Third Party Verification Calls

(1) Appropriate Verification Data. Pursuant to M.G.L. c. 93, § 109(c)(2)(i), the TPV agent must confirm appropriate verification data. For purposes of 220 CMR 13.03(1), appropriate verification data shall include:

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- (a) the last four digits of the customer's social security number;
- (b) the customer's date of birth;
- (c) the customer's mother's maiden name; or
- (d) any other independently verifiable personal information.

Customers who do not wish to provide any of the above verification data may authorize a carrier change through a LOA.

(2) Authority to Authorize a Change in Carrier. Pursuant to M.G.L. c. 93, § 109(c)(2)(ii), to authorize a change in carrier or service, the person to whom the TPV agent spoke must be at least 18 years of age unless the IXC or LEC that initiated the change can demonstrate to the Department that a minor is authorized. For a residence, the customer of record is presumed to have this authority if the customer meets the minimum age requirement. For a business, the person designated as the contact for local or long distance telecommunications company, or an officer or the owner of the business is presumed to have this authority. The TPV agent must ask whether the person spoken to is the customer of record. If the person responds in the negative, the TPV agent must then ask whether the person is authorized to change a primary IXC or LEC. If the person responds in the affirmative, the verification may continue.

(3) Identification of the TPV Agent and Company. Unless the TPV call is automated, in addition to stating the purpose of the TPV call, the TPV agent must state his or her full name.

(4) Written Confirmation of the Carrier Change. Unless a letter of agency is obtained from the customer, the billing entity must comply with requirements contained in 47 CFR 64.2001(a) concerning notification of any change to a customer's primary IXC or LEC.

(5) Failure to Maintain Audio Recordings. Unless the carrier that initiated the change obtained a letter of agency from the customer or received from the Department a waiver of the recording requirement, pursuant to M.G.L. c. 93, § 109(c)(5), the failure to maintain audio recordings shall be evidence that, if un rebutted, would establish that consent from the customer was not obtained.

(6) Minimum Standards to Receive a Waiver of the Tape Recording Requirement.

(a) In order to receive a waiver, pursuant to M.G.L. c. 93, § 109(c)(5), of the requirement that TPV calls be tape recorded, the Department requires a requesting carrier to demonstrate, at a minimum, that its verification system complies with the following:

1. captures in written or electronic form the information required to be tape recorded under M.G.L. c. § 109(c)(2);

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2. maintains, or causes to be maintained, the record described in 220 CMR 13.03(7)(a) for at least one year, making such record available at no cost and upon request to the Department, the Attorney General, or the customer;
3. prohibits the TPV company from using the information gathered in 220 CMR 13.03(7)(a) for any marketing purpose;
4. requires the TPV employee to read from a script, to be provided to the Department at the time it makes its waiver request, that elicits the information required in M.G.L. c. 93, § 109(c)(2) and prohibits the TPV employee from deviating from the script;
5. prohibits the TPV employee from modifying, or otherwise altering, the billing telephone number ("BTN") and information regarding the service to be changed;
6. prohibits a verification from occurring if a discrepancy arises between the BTN or service information provided to the TPV employee by the carrier's agent or employee and that information given by the customer; and
7. monitors, and causes monitoring of, the TPV employees for quality assurance.

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(b) At the time of filing its request for a waiver, the carrier shall provide the Department with its slamming history in every jurisdiction in which it operates. This slamming history shall cover the 12-month period immediately preceding the date of its waiver request and shall contain sufficient information to enable the Department to determine the number of complaints of unauthorized changes attributed to that carrier by the state authority in each jurisdiction of operation. The Department shall consider the carrier's slamming history as a factor in deciding whether to grant the waiver request.

(c) The Department may rescind a carrier's waiver of the tape recording requirement at any time.

13.04: Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

(1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in M.G.L. c. 93, § 109 and 47 CFR 64.1150(b) for each and every type of service sold or provides a LOA or TPV that the Department determines was obtained by a carrier's or TPV's mistake, misunderstanding, misrepresentation, false and deceptive business practices or by any other unfair or unlawful means.

(2) Complaint Resolution Procedure. A customer, IXC or LEC may initiate a complaint that a customer's IXC or LEC has been changed without the customer's authorization. Such a complaint must be made to the Consumer Division within 90 days after the date of the notice indicating that the customer's IXC or LEC has been changed. The Department shall investigate such complaint pursuant to the procedures

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established by M.G.L. c. 93 §§ 108 through 113, inclusive.

13.05: Informal Dispute Resolution Procedure for Slamming Complaints

(1) Election by Customer of An Informal Procedure For The Resolution of Complaint. For any matter relating to the unauthorized change of a customer's primary IXC or LEC, a customer may file a complaint with the Consumer Division of the Department and elect an informal procedure for the resolution of the complaint.

(2) Informal Procedure For The Resolution of Complaints. For any matter relating to the unauthorized change of a customer's primary IXC or LEC, where a customer has elected an informal procedure for the resolution of the complaint, the customer and the IXC or LEC that initiated the change may negotiate mutually acceptable terms upon which the complaint can be resolved. The terms of the customer and initiating carrier negotiated resolution to the complaint must be signed by both parties and filed with the Consumer Division of the Department. If mutually acceptable terms are not identified within 90 days from the customer's election of an informal dispute resolution procedure (or if the Department determines that the filed, negotiated resolution is unacceptable), the complaint will be processed in accordance with the procedures set forth in M.G.L. c. 93, § 110.

(3) Civil Penalties. The Department may, in consideration of the nature, circumstances and gravity of the respondent's conduct, degree of culpability and history of prior offenses, impose a civil penalty on an IXC or LEC as a condition of an acceptable informal resolution of a complaint.

13.06: Procedure to Record Slamming Complaints

(1) Carrier Identification.

(a) All IXCs and LECs providing service to customers must inform the Consumer Division of the following:

1. the name, address, and direct telephone number of the IXC or LEC;
2. the names, addresses, and direct telephone numbers of any billing agents affiliated with the IXC and LEC;

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3. the names, addresses, and telephone numbers of authorized representatives designated by the IXC or LEC to serve as liaisons between the IXC or LEC and the

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Department for the purpose of providing customer information and resolving complaints; and

4. the toll-free customer information number of the IXC or LEC as listed on customers' bills.

(b) All IXCs or LECs providing service to customers in Massachusetts must notify the Department of any changes or modifications made to the information required by 220 CMR 13.06(1)(a) within ten business days of such changes.

(2) Tracking. The Department shall track the instances in which an IXC, LEC or TPV company changed the IXC or LEC of customers without valid letters of agency or third party verification recordings.

(3) TPV Companies. The Department shall keep a record of any TPV company or any other agent affiliated with an IXC or LEC that has engaged in the unauthorized changing of IXCs or LECs of customers.

(4) Report to the Legislature. The Department shall keep monthly records of each unauthorized IXC or LEC change by company and prepare an annual report of each violation by company for submission to the Joint Committee on Government Regulations and the Attorney General.

13.07: Application Form for Third Party Verification Companies

The application form for TPV companies is incorporated herein by reference as filed with the Secretary of the Commonwealth and is available from the Department of Telecommunications and Energy.

13.08: Exception

The Department may, where appropriate, grant an exception from any provision of 220 CMR 13.00.

REGULATORY AUTHORITY:

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220 CMR 13.00: M.G.L. c. 93, §§ 109(c)(4), 110(k), 113(e), M.G.L. c. 159, § 12E(b).